

Message Text

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PAGE 01 MOSCOW 03455 051659Z

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TAGS: PARM, US, UR

SUBJECT: TTBT: PNE NEGOTIATIONS: LEGAL ARTICLES

ROUND VI - TTBT/PNE DELEGATION MESSAGE NO. 107

1. MATHESON AND LAPTEV MET AGAIN ON MARCH 5 TO DISCUSS LEGAL QUESTIONS. CONCERNING TREATY ARTICLE VII(2), SOVIETS ACCEPTED CHANGES CONTAINED IN PARA 5 OF MOSCOW 3294.

2. CONCERNING "PROFESSIONAL OR COMMERCIAL ACTIVITY" IN PARA 2(B) OF PROTOCOL ARTICLE XII, SOVIETS PREPARED TO ACCEPT TEXT CONTAINED IN PARA 1 OF MOSCOW 3294, BUT ONLY WITH DELETION OF "FOR PERSONAL PROFIT". LAPTEV DESCRIBED THIS AS ATTEMPT TO COMBINE FORMULATIONS IN ARTICLES 31 AND 42 OF VIENNA CONVENTION. WE TOLD SOVIETS THIS DELETION WAS UNACCEPTABLE.

3. CONCERNING VEHICLES, SOVIETS PREPARED TO ACCEPT IDEA OF SUBSTITUTING OBLIGATION OF DESIGNATED PERSONNEL TO COMPLY WITH INSURANCE LAWS OF HOST PARTY IN LIEU OF SUBJECTING DESIGNATED PERSONEL TO CIVIL ACTIONS IN COURTS OF HOST PARTY FOR RESULTING DAMAGE. IN ACCORDANCE WITH PARA 1 OF STATE 53809, WE SAID THIS WAS UNACCEPTABLE AND REITERATED US TEXT. SOVIETS CONTINUE TO BE ADAMANT AND REFUSE TO CHANGE THEIR TEXT. IN THIS REGARD, EMBASSY CONSULAR SECTION ADVISES THAT EMBASSY REQUIRES ITS PERSONNEL TO OBTAIN SOVIET INSURANCE FOR PRIVATE VEHICLES. WASHINGTON SHOULD

SECRET

SECRET

PAGE 02 MOSCOW 03455 051659Z

NOTE THAT FIRST ALTERNATIVE TEXT CONTAINED IN PARA 2 OF MOSCOW

3294 IS NOT EXCEPTION TO IMMUNITY OF DESIGNATED PERSONNEL FROM JURISDICTION OF HOST PARTY, BUT OBLIGATION TO COMPLY WITH CERTAIN LAWS OF HOST PARTY. IN THIS RESPECT IT IS SIMILAR TO AGREED PARA 4 OF ARTICLE XII, AND IN FACT MAY ALREADY BE COVERED BY IT.

4. REGARDING PARA 2(D) OF US TEXT, OUR PROPOSAL CONTAINED IN MOSCOW 3294 ESSENTIALLY INVOLVED: ADOPTING SOVIET PARA (D); ADDING STATEMENT THAT "THE PROPERTY OF DESIGNATED PERSONNEL SHALL OTHERWISE BE INVOLABLE" TO FIRST SENTENCE OF SOVIET PARA (E) AND US PARA (D)(1); AND DEALING WITH EQUIPMENT IN ENTIRELY SEPARATE ARTICLE. SOVIETS SEEM PREPARED IN PRINCIPLE TO ACCEPT THIS FORMAT, BUT THERE IS DISAGREEMENT OVER PLACEMENT OF STATEMENT RE INVOLABILITY OF PROPERTY. ASIDE FROM THIS DISAGREEMENT, REMAINDER OF ARTICLE XII MIGHT THEN READ AS FOLLOWS:

BEGIN TEXT.

(D) INVOLABILITY OF THEIR ARCHIVES AND DOCUMENTS AT ALL TIMES AND WHEREVER THEY MAY BE;

(E) INVOLABILITY OF THEIR OFFICIAL AND LIVING QUARTERS. AGENTS OF THE PARTY CARRYING OUT AN EXPLOSION MAY NOT ENTER THE OFFICES AND LIVING QUARTERS OF DESIGNATED PERSONNEL EXCEPT WITH THE CONSENT OF DESIGNATED PERSONNEL;

(F) THE PARTY CARRYING OUT THE EXPLOSION SHALL, IN ACCORDANCE WITH SUCH LAWS AND REGULATIONS AS IT MAY ADOPT, PERMIT ENTRY OF AND GRANT EXEMPTION FROM ALL CUSTOMS DUTIES, TAXES AND RELATED CHARGES OTHER THAN CHARGES FOR STORAGE, CARTAGE AND SIMILAR SERVICES, ON ARTICLES FOR THE OFFICIAL OR PERSONAL USE OF DESIGNATED PERSONNEL. THE PERSONAL BAGGAGE OF DESIGNATED PERSONNEL SHALL BE EXEMPT FROM INSPECTION, UNLESS THERE ARE SERIOUS GROUNDS FOR PRESUMING THAT IT CONTAINS ARTICLES NOT FOR THE OFFICIAL OR PERSONAL USE OF DESIGNATED PERSONNEL, OR ARTICLES THE IMPORT OR EXPORT OF WHICH IS PROHIBITED BY THE LAW OR CONTROLLED BY THE QUARANTINE REGULATIONS OF THE PARTY CARRYING OUT THE EXPLOSION. SUCH INSPECTION SHALL BE CONDUCTED ONLY IN THE PRESENCE OF DESIGNATED PERSONNEL OR THEIR AUTHORIZED REPRESENTATIVE. THE PROPERTY OF DESIGNATED PERSONNEL SHALL OTHERWISE BE INVOLABLE.

SECRET

SECRET

PAGE 03 MOSCOW 03455 051659Z

(G) EXEMPTION FROM ALL OTHER TAXES, CHARGE AND DUTIES, PERSONAL OR REAL, NATIONAL, REGIONAL OR MUNICIPAL, EXCEPT FOR INDIRECT TAXES OF A KIND WHICH ARE NORMALLY INCORPORATED IN THE PRICE OF GOODS OR SERVICES AND EXCEPT FOR CHARGES LEVIED FOR SPECIFIC SERVICES RENDERED.
END TEXT. PARA 4 FOLLOWS AS AGREED.

5. BOTH SIDES AGREED TO DEAL WITH EQUIPMENT SEPARATELY, AND

SOVIETS INDICATED THEIR UNDERSTANDING THAT SEPARATE PROVISIONS HAD TO BE STATED AS EXCLUSIVE PROCEDURES FOR ANY INSPECTION OR INTERFERENCE WITH SUCH EQUIPMENT. THIS IS TIMERBAEV'S WAY OF GETTING LAPTEV OUT OF THE MATTER.

6. REGARDING ARTICLE XIV, WE PROPOSED THAT REFERENCE TO "INFORMATION" IN PARA 2 BE QUALIFIED IN SOME WAY SUCH AS "INFORMATION OF A PROPRIETARY NATURE", "PROPRIETARY INFORMATION", OR "INFORMATION IN WHICH A PARTY HAS RIGHTS REFERRED TO". TIMERBAEV INDICATEED UNDERSTANDING OF US CONCERN BUT LAPTEV ADAMANTLY REFUSED TO CHANGE THE WORDING, STATING THAT IT WAS IMPOSIBLE TO DETERMINE WHAT INFORMATION WAS PROPRIETARY AND WHAT WAS NOT. TIMERBAEV SUGGESTED WE ADJOURN AND TRY TO PRODUCE ALTERNATIVE LANGUAGE LATER.

COMMENT: WHILE THIS DISCUSSION WAS HEADING TOWARD NOTHING, TIMERBAEV TOLD BUCHHEIM ON SIDE THAT BASIC PROBLEM IS: MFA DOES NOT DEAL WITH COMMERCIAL TOPICS LIKE PROPRIETARY RIGHTS, LAPTEV DOES NOT CONSIDER HIMSELF QUALIFIED TO AGREE TO ANYTHING ON THIS SUBJECT, LAPTEV HAS REPEATEDLY RECOMMENDED THAT TIMERBAEV CALL IN A LAWYER WHOSE FIELD IS PATENTS, ETC., AND TIMERBAEV DOES NOT WANT TO DO SO BECAUSE THIS WOULD "INVOLVE YET ANOTHER AGENCY" AND SLOW THINGS DOWN. HE ASKED IF US SIDE COULD SUGGEST LANGUAGE SATISFACTORY TO US THAT HE COULD "CHECK OUT" WITH SOME-ONE OTHER THAN LAPTEV. END COMMENT.
STOESSEL

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